

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

)	
FRATERNAL ORDER OF POLICE,)	
LODGE NO. 10.)	
Petitioner,)	
)	
AND)	<u>ULP No. 98-07-238</u>
)	
DELAWARE DEPARTMENT OF CORRECTION,)	
)	
Respondent.)	
)	

BACKGROUND

The Fraternal Order of Police, Lodge No. 10 (“FOP” or “Lodge 10”) is an employee organization within the meaning of §1302(h) of the Public Employment Relations Act, 19 Del.C. Chapter 13 1994 (“PERA” or “Act”). The FOP is the exclusive bargaining representative of employees in the Delaware Department of Correction, Bureau of Community Services (“DOC”), within the meaning of §1302(i) of the Act. The DOC is a public employer within the meaning of §1302(m) of the Act.

On July 30, 1998, the FOP filed the instant unfair labor practice charge alleging “per se” violations of §1307(a)(5), of the Act, specifically: a) the requirement that certain bargaining unit employees complete a daily time sheet; and b) the establishment of an eight (8) hour day. The Charge also alleges a “course of conduct” in violation of §1307(a)(5). On August 7, 1998, DOC filed its Answer denying the Charge and setting forth under New Matter a request that the charge be deferred to arbitration

pursuant to the PERB's discretionary deferral policy. On August 13, 1998, DOC filed its Response To New Matter denying the allegations set forth, therein.

A conference was held on September 11, 1998, at which time the Executive Director of the PERB concluded that a resolution of the two (2) alleged "per se" violations required the interpretation of Article 10, Work Schedules, as set forth in the parties' collective bargaining agreement. For this reason, both issues were deferred to the arbitration procedure provided for in the Agreement.

The "course of conduct" allegations were determined appropriate for consideration through the unfair labor practice procedure. In order to clarify the specific incidents upon which it intended to rely, the FOP was directed to provide a written list detailing each. The DOC would then be provided the opportunity to respond. The contested incidents were to be addressed at a formal evidentiary hearing.

After being held in abeyance at the request of the Petitioner, the matter was eventually scheduled for a hearing on Monday, February 22, 1999. In response to the Executive Director's request to define the issues upon which it intended to rely, the FOP, on February 17, 1999, resubmitted the original charge plus numerous additional incidents.

On February 19, 1999, the State objected to the FOP's submission of February 17, 1999, as being unresponsive to the Executive Director's request. The parties were advised that the FOP's latest submission would be treated as an amended complaint and the DOC was provided with the opportunity to submit an Amended Answer, which it provided on February 23, 1999. The hearing scheduled for February 22, 1999, was postponed by agreement of the parties.

On April 20, 1999, the parties were advised that if the FOP intended to pursue the Charge a hearing would be scheduled. The hearing was scheduled for June 4, 1999.

During this hearing, the FOP entered into evidence documents which were attached to the original charge. The FOP then rested without presenting further evidence.

The DOC moved to have the Charge dismissed contending that the proof submitted by the FOP failed to establish a prima facie case supporting the alleged "course of conduct" violation. The Executive

Director agreed to rule on the DOC's Motion with the understanding that if the Motion was dismissed a second day of hearing would be scheduled for the DOC to present its case.

DISCUSSION

The documents submitted into evidence by the FOP concern only the allegations set forth in the original Charge filed on July 30, 1998. The documents speak for themselves. Alone, they are insufficient to establish a prima facie case establishing the "course of conduct", as alleged.

The additional allegations contained in the Amended Complaint filed on February 17, 1999, are unsupported by any evidence of record.

In the absence of probative evidence, the FOP has failed to establish a prima facie case supporting the "course of conduct" violation it alleges.

DECISION

For the reasons set forth above, the DOC's Motion To Dismiss is granted.

Accordingly, the Charge is dismissed, with prejudice.

June 16, 1999

(Date)

/s/Charles D. Long

Charles D. Long

Executive Director